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MEMORANDUM
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Arizona Corporation Commission

FROM: Ernest E. Johnson
Director
Utilities Division
AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

AUG -5 2008

DATE: August 5, 2008

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RE: UTILITY SOURCE, LLC - REQUEST FOR EXTENSION OF COMPLIANCE DEADLINES (DOCKET NO. W04235A-05-0707)

In Decision No. 68962, dated September 21, 2006, the Arizona Corporation Commission ("Commission") approved the application of Utility Source, LLC ("Utility Source" or "Company") for an extension of its Certificate of Convenience and Necessity ("CC&N"). In issuing its decision, the Commission ordered the Company to provide the following filings:

- 1) "a copy of the ADEQ Certificate of Approval to Construct the water facilities for Parcels A and F in the extension area."
- 2) "a copy of the ADEQ Certificate of Approval to Construct the wastewater facilities for Parcels B and C in the extension area."
- 3) "a copy of the applicable ADEQ Aquifer Protection Permit and applicable Section 208 Permit for the proposed addition to its wastewater facilities needed to serve the requested area."
- 4) "a copy of the Coconino County franchise agreement for the requested area."

This equates to seven individual compliance items as outlined in the Company application:

1A	Water - ATC	Parcel A	Flagstaff Meadows III
1B	Water - ATC	Parcel F	Co. W/W Treat Plant Site
2A	W/W - ATC	Parcel B	306 Mobile Home Park
2B	W/W - ATC	Parcel C	20 Acre Commercial Project
3A	Aquifer Protection Permit	-	-
3B	208 Permit Amendment	-	-
4	Coconino County Franchise	-	-

The Company and Staff agree that Items 1A and 3B have been previously deemed complied and that the remaining items are the subject of the current application. This memorandum will address each of the remaining five items individually.

1B – Water ATC for Parcel F

The application requests that Staff declare the requirements for Parcel F to be complete. The ATC requirement for Section 1B – Parcel F is not complete because the Company has not filed an ATC.

2A - Wastewater ATC for Parcel B

2B – Wastewater ATC for Parcel C

The Company is requesting that the Commission allow the conditional CC&N to expire for wastewater service in both Parcel B and Parcel C.

Parcel B - Per the application, Parcel B is dedicated to a 306 unit mobile home park for which the developer originally intended to drill its own wells. When the wells would not produce adequate water, the developer requested service from the Company. The Company states that Parcel B cannot proceed without finalization of the water provider on the project. But, the parties could not negotiate an agreement and a formal complaint was filed by the developer, Vernon Bellmont, L.L.C., in Docket No. WS-04235A-07-0674. The current application states that the matter has been further negotiated and an agreement will be finalized in the very near future. On July 21, 2008, a call to Mr. Patrick Black, attorney for Vernon Bellmont, confirmed that the parties expect an agreement to be finalized and the complaint to be withdrawn.

Parcel C - According to the Company, Parcel C is owned by an associate of the Parcel B owners and also expected to receive its water service from the developer wells outlined in 2A (Parcel B) above. As with Parcel B, Parcel C will now need to request water service from the Company. Wastewater service will not be needed until the water service issue is finalized. Further, a preliminary plan is not approved and, according to the Company, this makes the receipt of an ATC unlikely in the near future. Therefore, the Company believes it cannot comply with the ATC requirement in Decision No. 68962 in a reasonable timeframe.

Based on the above details relating to Item 2A – Parcel B and Item 2B – Parcel C, the Company believes it is appropriate to allow the CC&N for each Parcel to terminate. Consistent with their pending agreement with Vernon Bellmont, L.L.C., the Company will then include requests for wastewater CC&N's for Parcel B and Parcel C with the newly requested water CC&N's. As both parties concur that an agreement is pending which will result in the withdrawal of the complaint in Parcel B and as the Company admits that it is unlikely to receive the necessary ATC in Parcel C, Staff concurs with the Company proposal and recommends that the CC&N for Parcels B and C be allowed to terminate due to non-compliance with the September 21, 2007 due date of Decision No. 68962.

3A – Aquifer Protection Permit

On March 21, 2008, Staff received an APP for Item 3A which was dated September 13, 2001. This APP was originally outlined to include the service from Item 2A – Parcel B and Item 2B – Parcel C. As outlined above, the Company has proposed and Staff has recommended that the Commission allow the conditional CC&Ns for those parcels to terminate and be resubmitted in a new CC&N application at a later time. The application states that the APP is “sufficiently sized to serve the Company’s existing CC&N area” and “covers the present requirements”, if Parcels B and C are excluded.

Staff engineering reviewed the Company’s comments and agrees that the 2001 APP is adequate with the exclusion of the Parcel B and Parcel C areas. As Staff has concurred with the Company proposal and recommended that the CC&N for those parcels be allowed to terminate due to non-compliance, the existing APP is considered adequate for compliance purposes. Staff therefore considers Item 3A – the Aquifer Protection Permit to be completed.

4 – Coconino County Franchise

The Company submitted an application for a public utility franchise on September 17, 2007 with the County of Coconino, State of Arizona. The issuance of the franchise has been pending with that entity. According to the application, the Coconino County Attorney’s Office has informed the Company that they would like to see the current application for extension of time completed and granted by the Commission prior to the County processing the Franchise application.

Based on the Company assertion regarding the County’s preference, Staff will not object to the Company’s request for extension of time on the Franchise. However, the Company filed the current application on June 27, 2008, requesting a three month extension period. By the time the Staff memorandum has been processed and the item is brought to a future Open Meeting, the Company’s extension period and September 17, 2008 proposed due date would likely need updating. Therefore, Staff recommends that the Commission due date for provision of the Coconino County Franchise be extended to December 31, 2008, to allow the County sufficient time to act on the matter.

Summary

Based on the application and all of the above, Staff has determined that the current application should be processed as follows:

1A	Water – ATC	Parcel A	Flagstaff Meadows III	Complied	
1B	Water – ATC	Parcel F	Co. W/W Treat Plant Site	Not Complied	
2A	W/W – ATC	Parcel B	306 Mobile Home Park	CC&N Termination	
2B	W/W – ATC	Parcel C	20 Acre Commercial Project	CC&N Termination	
3A	Aquifer Protection Permit	-	-	Complied	
3B	208 Permit Amendment	-	-	Complied	

4	Coconino County Franchise	-	-	Extension to 11/30/08	
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In summary, Staff therefore makes the following recommendations and findings.

Staff finds that Item 1A – Water ATC has been complied.

Staff finds that Item 1B – Water ATC has not been complied.

Staff further recommends that the CC&N for Item 2A – W/W ATC for Parcel B be terminated.

Staff further recommends that the CC&N for Item 2B – W/W ATC for Parcel C be terminated.

Staff finds that Item 3A – the Aquifer Protection Permit has been complied.

Staff finds that Item 3B – the 208 Permit Amendment has been complied.

Staff does not object to the Company request for an extension of time on Item 4 – the Franchise. However, in order to provide sufficient time, Staff recommends that the due date for the Franchise be extended until December 31, 2008.

EGJ:BKB:lhbm

Originator: Brian K. Bozzo

Attachment

SERVICE LIST FOR: UTILITY SOURCE, L.L.C.
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June 27, 2008

HAND DELIVERY

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06-27-08A09:24 RCVD

Re: Utility Source, LLC, Docket No WS-04235A-05-0707; Decision No. 68962; Request for Extension of Time to Comply

Dear Mr. Bozzo:

We are in receipt of your May 16, 2008 facsimile in which you summarize the compliance status for the subject Decision. We concur with you that the compliance items required by the Decision are those listed on your summary as follows:

1 A	Water Approval to Construct for Parcel A Flagstaff Meadows Unit III)
1 B	Water Approval to Construct for Parcel F (Company's Wastewater Treatment Plant Site)
2A	Wastewater Approval to Construct for Parcel B (306 Unit Mobile Home Park)
2B	Wastewater Approval to Construct for Parcel C (20 acre Commercial Parcel)
3 A	Aqua Protection Permit
3B	208 Permit Amendment
4	Coconino County Franchise

We also concur with you that **Items 1A and 3B** have been fully completed.

Item 1B. Parcel F is a 3 acre parcel fully occupied by the Company's wastewater treatment plant ("WWTP"). The water main serving Parcel F is located in the Frontage

Road, which facilities serve Flagstaff Meadows Unit III. The only water use on the entire site is from a service line to a hose bib used by the plant operators to clean up the WWTP facilities. There is not even a bathroom on the site. There are not, nor will there be, any distribution facilities on that parcel which require Arizona Department of Environment Quality ("ADEQ") approval. As stated, on-site service is provided by a single ¾ inch line running to the headworks of the plant.

The Company sought to include this area in its Certificate of Convenience and Necessity ("CC&N") merely as a "clean up" to its service area map. The Company is of the opinion that an Approval to Construct ("ATC") is not needed for this parcel, nor could it be obtained from ADEQ as there will be no further construction. The Company requests that the Staff declare the requirements for Parcel F to be complete.

Item 2A. Parcel B, the 306 unit mobile home park, as stated in our Request, cannot proceed without finalizing the water provider to the project. Mr. McCleve testified at the hearing on this matter that the Developer intended to drill its own wells for the provision of water service. Subsequently, it was learned that the wells would not produce sufficient quantities or quality of water for that project, so the Developer requested service from the Company. The parties were unable to negotiate an acceptable agreement for that service, and the Developer filed a formal complaint against the Company in Docket No. WS-04235A-07-0674. The Administrative Law Judge in that proceeding has instructed the parties to further negotiate the matter, and we believe the agreement will be finalized in the very near future, and the Complaint withdrawn. At that time the Company will file an application with the Commission for the water CC&N. Given the above, it is the Company's opinion that it would be appropriate to permit the conditional CC&N for the wastewater service to Parcel B to expire. The Company will then, consistent with its agreement with the Developer, ask for the wastewater CC&N simultaneous with the requested water CC&N.

Item 2B. Parcel C, requesting only wastewater service, is owned by an associate of the Parcel B owners. That parcel was planning on receiving water service from the wells referenced in response to Item 2A above. Now Parcel C will need water service from the Company as well. Owners of both parcels will be the parties to the above settlement agreement, so wastewater service is not needed until water service issues are resolved. The Developer does not have a preliminary plan approved for that development at this time, and as a result it is unlikely that an ATC could be obtained even by the requested extension date of September 20, 2008. Therefore, the Company would request that the Staff permit the CC&N for this parcel to also expire. The Company will then include this parcel in the CC&N application for Parcel B, or submit a separate future CC&N application when the details of the new project are known.

Item 3. The Aquifer Protection Permit ("APP") submitted to the Staff is for a 150,000 gallon per day WWTP and is dated September 13, 2001. In the hearing on this matter, it was contemplated that service would be provided to the 306 unit mobile home park in Parcel B and the commercial project in Parcel C. The existing APP is sufficiently sized to serve the Company's existing CC&N area, as well as those lots within Parcel A, Flagstaff Meadows Unit III. Only if the demands of Parcels B and C are included does

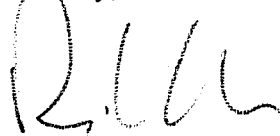
the WWTP need to be expanded. If Parcels B and C are excluded from the subject CC&N, the 2001 APP covers the present requirements. The Company will address the APP for Parcels B and C when it submits its new CC&N Application for those areas.

Item 4. As indicated in our Request, the Coconino County Attorneys Office has indicated they would like to see the requested extension for the Compliance Items be granted by the Commission prior to it processing the Franchise Application. We believe that in the event the extension to September 20, 2008 is granted, the Franchise can be obtained and filed before the new Compliance Date.

In summary, the Company believes compliance Items 1A and 3B have been completed. They believe Item 1B is neither needed nor attainable, and should be declared complete. It is submitted Items 2A and 2B can be declared as in noncompliance and the CC&N for those areas denied by operation of law. The September 13, 2001 Aquifer Protection Permit should be declared sufficient for the reduced expansion area. And finally, the Company requests an extension of the compliance date for the Franchise Agreement until September, 20, 2008 which, upon filing, would complete the compliance requirements of Decision No. 68962.

In the event you have any questions regarding these matters please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. L. Sallquist', written over a light background.

Richard L. Sallquist

Enclosures

cc: Docket Control (15 copies)
Lonnie McCleve